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# A Practical Guide to Admiralty Law for the Seagoing Naval Officer

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UNIVERSITY OF RHODE ISLAND

A PRACTICAL GUIDE TO ADMIRALTY LAW  
FOR THE SEAGOING NAVAL OFFICER

MARINE AFFAIRS SEMINAR

GMA: 652

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BY

JOHN EDWARD WALTERS

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## INTRODUCTION

Daily there are hundreds of United States Navy vessels operating in foreign, international and domestic waters. The knowledge of admiralty law possessed by the officers on these vessels is extremely limited. Prospective Commanding Officers of Navy vessels are trained in areas of international and maritime law, but not in cases involving admiralty. If a United States naval vessel is involved in an admiralty incident, the only recourse the Commanding Officer has is to contact his superior and wait for word from the Staff Judge Advocate representative. It is not necessary for Commanding Officers to be experts on admiralty matters in order to know what to do in certain situations. In international law, Commanding Officers are not experts; however, they are given a working knowledge on which decisions can be based.

This paper will present basic concepts of admiralty law that directly affect United States naval vessels in everyday operations. It is not designed to replace Chapter 12 of the Judge Advocate General's Manual concerning Admiralty Claims, but rather to supplement that instruction with explanations of basic concepts and illustrative examples. Commanding Officers are advised to consult Chapter 12 of the JAG Manual for specific guidance on United States Navy admiralty procedures; this paper should only be referred to on an informational basis.

## I. ADMIRALTY PRACTICES

What constitutes an admiralty case? If asked this question, many of us immediately think of marine collisions, and, indeed, marine collisions are admiralty in nature and are often well publicized. Marine pollution cases are also well publicized and, therefore, quickly come to mind, but many other areas fall under the realm of admiralty law. Seamen's rights for wages, maintenance and cure, carriage of goods by sea, and salvage are but a few areas falling under the heading of admiralty law. Most of these cases have a common bond -- they involve a ship engaged in sea travel. Ships so engaged have always created unique legal cases since the presence of the ship or owner of the ship during the legal procedures cannot be guaranteed. In order to understand these unique admiralty practices, a basic knowledge of admiralty terminology and procedures is required.

### ADMIRALTY PRACTICE IN REM

The unique admiralty terminology with regards to actions against a vessel was best stated by Circuit Justice Curtis in 1855:

A right which enables a creditor to institute a suit, to take a thing from any one who may possess it, and subject it, by a sale, to the payment of his debt; which so inheres in the thing as to accompany it into whosoever hands it may pass by a sale; which is not divested by a forfeiture or mortgage, or other encumbrance created by the debtor, can only be a jus in re, in contradistinction to a jus ad rem, or in contradistinction to a mere personal right or privilege. Though tacitly created by the law, and to be executed only by the aid of a court of justice, and resulting in a judicial sale, it is as really a property in the thing as the right of a pledgee or the lien of a bailee for work. The distinction between



a jus in re and a jus ad rem was familiar to lawyers of the middle ages, and is said then to have first come into practical use, as the basis of the division of rights into real and personal. A jus in re is a right, or property in a thing, valid as against all mankind. A jus ad rem is a valid claim on one or more persons to do something, by force of which a jus in re will be required. The lawyers of the middle ages, who gave form to the customs of the seas, and arranged judicial proceedings to carry them into effect, certainly did not rank a lien or privilege among the jura ad rem. For it has been settled so long, that we know now its beginning, that a suit in the admiralty to enforce and execute a lien, is not an action against any particular person to compel him to do or forbear any thing; but a claim against all mankind; a suit in rem, asserting the claim of the libellant to the thing, as against all the world. It is a real action to enforce a real right.<sup>1</sup>

The admiralty practice in rem is well established as one by which the action is directed against the vessel itself as the debtor or offending thing. Certain aspects of this admiralty practice have been carried into civil actions as well. Under United States law, a ship can be sued, arrested, defaulted or found at fault, and sold at a marshal's auction, all without the shipowner being involved.<sup>2</sup>

#### ADMIRALTY PRACTICE IN PERSONAM

If a vessel is sued in rem, her owners are usually likewise sued in personam. Most actions in admiralty are in personam, for which there are many good reasons. An action in rem depends upon the survival of the property; without the vessel or its cargo, the only action would be against the owner. One must also look at the value of the property involved; there could be great disparities in regards to the value on specific property

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<sup>1</sup>THE YOUNG MECHANIC, 30 Fed. Cas. 873, 876 (No. 18, 180)(C.C.D.Me. 1855), cited in Nicholas J. Healy and David J. Sharpe, Cases and Materials on Admiralty, American Casebook Series (St. Paul, Minn.: West Publishing Co., 1974), pp. 63-64.

<sup>2</sup>Ibid., p. 28.



placed by individuals. In order to ensure an avenue for actions, admiralty courts are given the power over persons, in personam.<sup>3</sup> However, this power over persons must be in cases of maritime subject matter. What constitutes maritime subject matter has been the focal point of many admiralty cases. In 1871, the Supreme Court in Insurance Co. v. Dunham held that the District Court, sitting in admiralty, had jurisdiction to entertain a libel in personam on a policy of marine insurance.<sup>4</sup> In North Pacific S.S. Co. v. Hall Bros. Co., the Supreme Court reiterated that a contract to build a ship, or supplying the materials for construction, is not a maritime contract, however, materials and services for repairs are maritime in nature.<sup>5</sup>

#### MARITIME LIENS

If jurisdiction in an admiralty court is granted, the case can proceed in rem and/or in personam. Does this mean that every case against the shipowner or vessel itself ends in the vessel being auctioned to the highest bidder? Of course not, but there is an admiralty practice of using the vessel as security, thereby binding the vessel under admiralty law. The use of a vessel as security is known as a maritime lien. In 1819, the Supreme Court in The General Smith held:

Where repairs have been made, or necessities have been furnished to a foreign ship, or to a ship in a port of the State to which she does not belong, the general maritime law, following the civil law, gives the party a lien on the ship itself for his security; and he may well maintain a suit in rem in the Admiralty to enforce his right. But in respect to repairs and necessities in the port or

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<sup>3</sup>Ibid., p. 43.

<sup>4</sup>Ibid., pp. 43-49.

<sup>5</sup>Ibid., pp. 49-53.

State to which the ship belongs, the case is governed altogether by the municipal law of that State; and no lien is implied, unless it is recognized by that law.<sup>6</sup>

This decision became known as the Homeport Creditors Rule, and ensured that ships in foreign or not in State ports would be able to receive credit. It is easy to see the importance of the decision -- if an unknown vessel were to pull into a port, what good businessman would provide goods or services without a guarantee of payment, i.e., without a maritime lien against the vessel?

By whom and under what circumstances are maritime liens enforceable? Clarification of this question was given in The Maritime Lien Act of 1920.

#### 971. Persons entitled to lien

Any person furnishing repairs, supplies, towage, use of dry dock or marine railway, or other necessities, to any vessel, whether foreign or domestic, upon the order of the owner of such vessel, or of a person authorized by the owner, shall have a maritime lien on the vessel, which may be enforced by suit in rem, and it shall not be necessary to allege or prove that credit was given to the vessel.

#### 975. State statutes superseded

This chapter shall supersede the provisions of all State Statutes conferring liens on vessels, insofar as such statutes purport to create rights of action to be enforced by suits in rem in admiralty against vessels for repairs, supplies, towage, use of dry dock or marine railway, and other necessities.<sup>7</sup>

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<sup>6</sup>The General Smith, 17 U.S. (4 Wheat.) 428, 4 L. Ed. 609 (1819), cited in Ibid., pp. 228-230.

<sup>7</sup>U.S.C.A. Title 46: Shipping, The Federal Maritime Lien Act (1920), cited in Ibid., pp. 278-279.



Suppliers of repairs, supplies, towage, and other necessities can have a maritime lien on the vessel, but what types of specific liens are common, and how are numerous liens on a single vessel prioritized? In Osaka Shosen Kaisha v. Pacific Export Lumber Co., the Supreme Court, in 1923, held that a contract of affreightment itself creates no lien.<sup>8</sup> In Insurance Co. v. The Proceeds of the Barge Waubaushene, the Circuit Court for the Northern District of New York, in 1885, held that liens do not extend to contracts which do not aid the vessel, but are merely for the benefit of the owner; e.g., insurance is not a maritime contract.<sup>9</sup> In 1889, the District Court for the Southern District of New York, in Chapman v. The Engines of the Greenpoint, indicated salvage service carries with it a maritime lien on the things saved. Salvage ranks among the highest in merit and in privilege.<sup>10</sup> In 1899, the U.S. Circuit Court of Appeals, in The Anaces, held that personal injuries resulting from defective appliances, want of proper construction of the ship, or injuries caused by negligent misuse of a proper appliance do give a lien and an action in admiralty against the owners of the ship.<sup>11</sup>

Vessels normally acquire more than one lien against them in a single voyage. If the liens are not settled, and an admiralty action is maintained, the courts have prioritized such liens. In 1909 the U.S. District Court, in The America, stated that the order of equal liens is reverse chronological order.<sup>12</sup> In The John G. Stevens, 1898, the Supreme

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<sup>8</sup> Ibid., pp. 235-237.

<sup>9</sup> Ibid., p. 240.

<sup>10</sup> Ibid., pp. 240-243.

<sup>11</sup> Ibid., pp. 245-246.

<sup>12</sup> Ibid., pp. 255-256.

Court found that, dependent upon the nature of the contract, tort liens outrank contract liens, a tort for negligent towage has preference over a previous lien for supplies.<sup>13</sup> In The C.J. Saxe, 1906, the U.S. District Court found seamen's wages to have priority over a tort arising from a collision.<sup>14</sup> In 1927, the U.S. District Court for the District of Maryland, in The William Leishear, helped end the confusion over the question of priority of liens. The following order, regardless of time, was provided: "(1) Seamen's wages; (2) salvage; (3) tort and collision liens; (4) repairs, supplies, towage, wharfage, pilotage, and other necessities; (5) bottomry bonds in inverse order of application; (6) nonmaritime claims."<sup>15</sup>

#### SEAMEN'S CLAIMS

Admiralty Courts have always held the rites of Seamen in very high esteem, as evidenced by their paramount standing in maritime lien priorities. This esteem is most evident in the 1823 case of Harden v. Gordon, U.S. Circuit Court:

Seamen are by the peculiarity of their lives liable to sudden sickness from change of climate, exposure to perils, and exhausting labour. They are generally poor and friendless, and acquire habits of gross indulgence, carelessness, and improvidence. If some provision be not made for them in sickness at the expense of the ship, they must often in foreign ports suffer the accumulated evils of disease, and poverty, and sometimes perish from the want of suitable nourishment . . . On the other hand, if these expenses are a charge upon the ship, the interest of the owner will be immediately connected with that of the seamen. The master will watch over their health with vigilance and fidelity . . . Beyond this is the great public policy of preserving this important class of citizens for the commercial service and maritime defense of the nation.<sup>16</sup>

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<sup>13</sup> Ibid., pp. 257-258.

<sup>14</sup> Ibid., pp. 254-255.

<sup>15</sup> Ibid., pp. 250-254.

<sup>16</sup> Ibid., pp. 310-311.



The Seaman has always been held in high regard. The Shipowners' Liability Convention of 1939 made shipowners liable for sickness and injury between dates of reporting for duty and date of termination. The shipowner is also liable for death resulting from such sickness or injury. There are exceptions to these provisions, when the injury or death is incurred otherwise than in the service of the ship, due to willful act, default or misbehavior, or is intentionally concealed when the engagement is entered into.<sup>17</sup> Seamen's claims for maintenance and cure have been discussed in many cases. One interesting case involved a messman aboard a United States owned ship, the S.S. Anna Howard Shaw. In the case Warren v. United States, 1951, the messman Warren, brought suit for maintenance and cure for injury that occurred while on shore leave in Naples, Italy. The Supreme Court held that shore leave is a necessity and, therefore, the injury occurred while in the service of the ship.<sup>18</sup>

For seamen with negligence claims against the shipowners, the Jones Act provides the basic avenue of redress. Under that act, the seaman is provided the right to: (1) personal injury in the course of his employment; (2) right to a trial by jury; (3) remedy as in cases of personal injury to railway employees shall apply; (4) jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which the principle office is located.<sup>19</sup>

Since the Jones Act is based on shipowners' negligence, the action resulting from that neglect is in personam against the employer and not in

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<sup>17</sup> Ibid., p. 312.

<sup>18</sup> Ibid., p. 312-315.

<sup>19</sup> Ibid., p. 816.

rem, as is documented in the Supreme Court ruling of 1928, Plamals v. The Pinar Del Rio.<sup>20</sup> There are many cases involving descriptions of what constitutes being a seaman. For example in Senko v. La Crosse Dredging Corp., 1957, it was determined that a deckhand on a dredge was a seaman in the service of the vessel even when on land in the course of his employment.<sup>21</sup> As was stated in Offshore Co. v. Robison, 266 F. 2d 769 (5th Cir. 1959), workers on offshore oil rigs have enough evidentiary basis to go to a jury under the Jones Act, provided the workman is permanently assigned to the vessel and his duties contribute to the function of the vessel.<sup>22</sup>

The United States, as owner of many ships with merchant seamen, is in a unique position. Under the Jones Act, seamen were given a right to redress similar to that provided by the Federal Employers Liability Act, which held the United States libel for damages to any person suffering injury while in the employment of the United States by reason of any defect or insufficiency, due its negligence.<sup>23</sup>

The final avenue by which the poor seaman can seek restitution is based on unseaworthiness. It is the owners' duty to furnish a seaworthy ship; this duty is absolute and completely independent of his duty under the Jones Act to exercise reasonable care, as explained in Mitchell v. Trawler Racer, Inc., Supreme Court, 1960.<sup>24</sup> In most cases, a seaman will file for maintenance and cure under the Jones Act, alleging negligence and unseaworthiness simultaneously.

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<sup>20</sup> Ibid., pp. 329-330.

<sup>21</sup> Ibid., pp. 330-331.

<sup>22</sup> Ibid., p. 334.

<sup>23</sup> Ibid., pp. 810-812.

<sup>24</sup> Ibid., pp. 350-354



## MARINE COLLISIONS

The collision of ships and the admiralty practices associated with such occurrences are probably the easiest to understand. Most cases involve dispute over the fault of the accident. This is especially important with regards to the current comparative fault rule in which the degree of fault indicates the amount of damages each vessel must pay. Many cases have been decided regarding fault. In 1874, the Supreme Court, in The Pennsylvania, held that a vessel damaged, when in violation of a statutory rule intended to prevent collisions, has the burden of showing not merely that her fault might not have been one of the causes, or that it probably was not, but that it could not have been.<sup>25</sup> Another famous case is The Bywell Castle, 1879, Court of Appeal. In this case the vessel Bywell Castle, was placed in extremis by actions of the other vessel, the Princess Alice. Even though the master of the Bywell Castle issued an incorrect helm order, the Princess Alice was held solely to blame because she put the Bywell Castle into the extremely difficult position.<sup>26</sup>

Many cases involve the determination of fault based on compliance with navigational rules. Cases have also arisen to clarify points of the Rules of the Nautical Road, both Inland and International. Farwell's Rules of the Nautical Road<sup>27</sup> is an excellent source for understanding the Rules as supported by case law.

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<sup>25</sup> Ibid., pp. 668-673.

<sup>26</sup> Ibid., pp. 663-666.

<sup>27</sup> Frank E. Bassett and Richard A. Smith, Farwell's Rules of the Nautical Road, 5th ed. (Annapolis, Maryland: United States Naval Institute, 1977).

As new equipment is brought into use to aid navigation, new cases are forthcoming to interpret how the new equipment affects current navigation rules. The use of radar in navigation has been the subject of many marine collision cases. In 1960, the U.S. Court of Appeals, in Afran Transport Co. v. The Bergechief, A/S Sneffon v. The Burgan, found that the use of radar does not justify a failure to obey the rules of navigation, and that if a vessel carries radar and approaches an area of poor visibility, it has an affirmative duty to use the radar.<sup>28</sup>

If his ship is involved in a marine collision, a shipowner will always want to limit the amount which he is required to pay. The Limitation of Liability Act of 1851 held the shipowner liable for all personal torts, contracts, and warranties acquired with his privity or knowledge. Naturally the shipowner will try to exonerate himself in order to pay nothing; the victims will, of course, try to defeat the shipowner's claim for exoneration. If the shipowner wins, he secures judicial limitation of liability, measured by investment in the ship calculated at the end of the voyage plus voyage earnings.<sup>29</sup>

#### SALVAGE

The elements of salvage in admiralty law are probably the most misunderstood areas of the law. It is not uncommon to find a competent mariner that believes anything salvaged legally becomes the salvor's property. The Supreme Court, in 1870, in The Blackwall, defined salvage as follows:

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<sup>28</sup> Nicholas J. Healy and David J. Sharpe, Cases and Materials on Admiralty, American Casebook Series (St. Paul, Minn.: West Publishing Co., 1974), pp. 694-699.

<sup>29</sup> Ibid., pp. 91-92.



Salvage is the compensation allowed to persons by whose assistance a ship or her cargo has been saved, in whole or in part, from actual loss, as in cases of shipwreck, derelict, or recapture.<sup>30</sup>

This case also listed the factors used to determine the amount of award that should be granted for salvage service. The main ingredients for determination are:

- (1) The labor expended by the salvors decreed for salvage service.
- (2) The promptitude, skill, and energy displayed in rendering the service and saving the property.
- (3) The value of the property employed by the salvors in rendering the service, and the danger to which such property was exposed.
- (4) The risk incurred by the salvors in securing the property from the impending peril.
- (5) The value of the property saved.
- (6) The degree of danger from which the property was rescued.<sup>31</sup>

Normally the highest award granted in a salvage suit ranges from a moiety (fifty percent of the value of the saved property) to a relatively small percentage of the value.

The common misconception that the entire vessel belongs to the salvor is replaced by normal awards of five to ten percent of the value of the saved property.

Salvage law differs from common law with respect to salvage. If someone saves a horse from a burning stable, he is not entitled to a portion of the value of the property saved. However, in marine salvage, the salvor can file a libel, have the property arrested and, if necessary, cause a sale of the property to justify the decree.<sup>33</sup> In order for a valid salvage claim to exist, three elements must be present. "They are: 1. Property in peril on navigable waters; 2. Voluntary service; and, 3. Success in whole or in

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<sup>30</sup> Ibid., p. 577.

<sup>31</sup> Ibid., p. 576.

<sup>32</sup> Ibid., p. 584.

<sup>33</sup> M. J. Norris, ed., Benedict on Admiralty (New York, New York: Matthew Bender, 1980), section 12.

part."<sup>34</sup>

By law, the salvage claim involves property (not necessarily limited to an entire vessel) in peril. In 1947, the U.S. District Court in, Broere v. Two Thousand One Hundred Thirty-Three Dollars, held that the money found on the body of a drowned victim was subject to salvage since it was a ". . . movable thing, possessing the attributes of property, susceptible to being lost and saved in places within the local jurisdiction of the admiralty."<sup>35</sup>

Not everyone is entitled to a claim for salvage. A pilot is not ordinarily entitled salvage for services rendered to a vessel he is piloting. Passengers are entitled to salvage for only extraordinary services. Firemen are not entitled for extinguishing a fire on board a vessel. The government as owner of a salving vessel and its master and crew, are entitled salvage; however, this does not apply to the Coast Guard.<sup>36</sup> There are other restrictions placed on the government as salvor that will be discussed later in this paper.

#### CLAIMS AGAINST THE GOVERNMENT

In 1920, liability of the United States in admiralty began as a result of World War I. Between 1916 and 1920, partial immunity had been given by the Shipping Act which made United States merchant ships liable in rem.<sup>37</sup> In 1920, the Suits in Admiralty Act allowed for prompt payment

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<sup>34</sup> Ibid., section 63.

<sup>35</sup> Nicholas J. Healy and David J. Sharpe, Cases and Materials on Admiralty, American Casebook Series (St. Paul, Minn.: West Publishing Co., 1974), p. 587.

<sup>36</sup> Ibid., p. 593.

<sup>37</sup> M. Timothy Conner, "Maritime Tort Liability of the United States," Journal of Maritime Law and Commerce 11 (April 1980): 271-272.



of claims, therefore abolishing the right to in rem actions granted by the Shipping Act, and substituting libel in personam for libel in rem.<sup>38</sup> The Public Vessels Act of 1925 allowed in personam suits in admiralty against the United States for damages caused by a public vessel.<sup>39</sup> The Admiralty Jurisdiction Extension Act of 1948 extended jurisdiction to damages or injury caused on land by a vessel.<sup>40</sup> In 1960, the Suits in Admiralty Act was amended to authorize suits against the U.S. where a private person or property was involved.<sup>41</sup>

The United States was immune to tort claims by the seamen it employed until the Federal Employee's Compensation Act of 1916. However, unlike other workmen compensation statutes, the Federal Employee's Compensation Act (FECA) did not provide an exclusive remedy clause that substituted compensation for workmen's tort actions. The exclusive remedy for all United States employed civilian seamen was general maritime law, and the Jones Act for negligence in admiralty.<sup>42</sup> In 1946 the Federal Tort Claims Act (FTCA) waived the immunity of the United States for maritime torts other than collision torts. Following the Second World War, U.S. seamen began tort actions against the United States under the FTCA. In 1949, FECA was amended to become the exclusive remedy for U.S. seamen.<sup>43</sup>

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<sup>38</sup>Ibid., p. 272.

<sup>39</sup>Ibid., p. 273.

<sup>40</sup>Ibid., p. 278.

<sup>41</sup>Ibid., p. 274.

<sup>42</sup>Nicholas J. Healy and David J. Sharpe, Cases and Materials on Admiralty, American Casebook Series (St. Paul, Minn.: West Publishing Co., 1974), p. 87.

<sup>43</sup>Ibid.,

## II. ADMIRALTY AND THE NAVY

In order to better understand the principles of admiralty as they apply to the Navy, the operating cycle of an imaginary naval vessel, USS Calamity, will be followed. USS Calamity is a destroyer-type vessel homeported in Charleston, South Carolina, currently undergoing a multi-million dollar shipyard overhaul in Brooklyn, New York.

### UNITED STATES NAVAL VESSEL STATUS

What is the legal status of USS Calamity as a warship of the United States? All vessels owned or bareboat chartered by the United States, operated by the U.S. and employed for a public purpose are grouped as "public vessels". As such, naval vessels are subject to the provisions of the Public Vessel Act of 1925.<sup>44</sup> Under this Act, the Navy is liable for damage caused by USS Calamity, a public vessel. The scope of damages for which the Government is responsible has grown since enactment in 1925. Currently it includes: swell or wave wash damage, damage to private property (e.g. fish nets), damage to commercial cargo, personal injury or death of a civilian, damage from oil spills, paint spray, etc., and damage to third parties.<sup>45</sup>

What type of admiralty action can be brought against USS Calamity? Waiver of sovereign immunity by the United States in shipping began with passage of the Suits in Admiralty Act of 1920, but this referred to U.S.

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<sup>44</sup>M. D. Seiders, Jr., "Interagency Investigations of Marine Casualties Involving Public Vessels of the Navy," JAG Journal, no. 30 (Summer, 1978), p. 88.

<sup>45</sup>Manual of the Judge Advocate General, Chap XII (Washington, D.C., Department of the Navy, 1978), p. 4.



owned vessels employed as merchant vessels and barred in rem proceedings.<sup>46</sup> Calamity is under the Public Vessels Act that also barred in rem proceedings but allowed that in admiralty, a libel in personam may be brought against the United States for damages caused by a public vessel.<sup>47</sup> This was intended to give private owners or operators of vessels the same rights of recovery against a public vessel that they have against each other. A libel in personam may be brought against the United States in cases where a procedure in rem could have been maintained, had such a vessel been privately owned or operated.<sup>48</sup> As such, ships of the United States are immune from maritime liens.<sup>49</sup>

As the end of Calamity's drydock period approached, the crew looked forward to refloating her and held a party to celebrate. On his return from the party, Seaman Smith, in a very jubilant state, decided to float the Calamity immediately. He opened valves to the drydock and began letting water in. Before the water could be stopped, Calamity slid off her blocks and damaged portions of the drydock. Even though this was not a collision, was the Calamity libel? In a similar case a Coast Guard vessel slid off her blocks and caused damage to a dry-dock; action was maintainable under the Public Vessels Act for damages "caused by" a public vessel.<sup>50</sup>

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<sup>46</sup>H. R. Bear, Admiralty Law of the Supreme Court (Charlottesville, Virginia: The Michie Co., 1979), p. 725.

<sup>47</sup>Ibid., p. 726.

<sup>48</sup>Eastern SS Lines v. United States, 187 F. 2d 956 (C.A. Mass. 1951).

<sup>49</sup>Grillea v. United States, 232 F. 2d 919 (C.A.N.Y. 1956).

<sup>50</sup>Ira S. Bushey and Sons, Inc. v. United States, 398 F. 2d 167 (C.A. New York. 1968).

Congress' use of such broad language in authorizing suits against the United States for damages caused by public vessels was used to prevent restrictive interpretation.<sup>51</sup>

After once again being secured on the blocks in drydock, the crew began touch-up painting of areas scratched during the collision with the drydock. During the painting operations, some overspray fell on automobiles being stored by the local Buick dealer in an adjacent parking lot. What actions were available to the dealer?

Motor Insurance Co. v. United States  
239 F. Supp 121 (D.C. N.Y. 1965)

Public Vessels Act which provides that suit in admiralty may be brought against United States for damages caused by public vessel of United States is not limited to actions in which vessel itself was instrument causing damages but applies as well to cases where damage was caused by negligence of vessel's personnel.

August 22, 1963, the aircraft carrier Essex was docked at pier 86 in New York City, defendants were engaged in spray painting her, and that because of their negligence some of the paint came in contact with an automobile owned by plaintiffs' insured which was in a nearby parking lot.

Supported by Public Vessels Act and 46 U.S.C. Section 740 Extension of Admiralty Act. It provides "The admiralty and maritime jurisdiction of the United States shall extend to and include all cases of damage or injury, to person or property, caused by a vessel on

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<sup>51</sup>Canadian Aviator v. United States, 324 U.S. 215, 65 Sup. Ct. 639, 89 L. Ed. 901 (1945).



navigable water, notwithstanding that such damage or injury be done or consummated on land."

#### STATUS OF SHOREWORKERS

While Calamity was still in overhaul, two accidents occurred on-board involving contractor personnel. In the first accident, a contractor employee was injured when he fell from a ladder during the final inspection of a fuel tank prior to its being sealed. The employee brought suit against the Government under the warranty of unseaworthiness. Earlier in this paper it was stated that there was three avenues available for seamen: maintenance and cure, negligence, and unseaworthiness. Here is a civilian shipyard worker bringing a suit under unseaworthiness as a seaman. What is unseaworthiness?

In 1903, the Supreme Court, in The Osceola, considered the law settled with respect to the legal obligation of the vessel and her owner to furnish the crew a seaworthy ship. The Court stated: That the vessel and her owner are . . . liable to an indemnity for injuries received by seamen in consequence of the unseaworthiness of the ship, or a failure to supply and keep in order the proper appliances appurtenant to the ship . . . .

This is still the law. The term "seaworthy vessel" means a vessel whose hull and equipment are reasonable fit for the impending voyage and whose crew is equal in disposition to the ordinary men in the calling. In the case of Mahnich v. Southern Steamship Co. it was held that the duty to provide a seaworthy vessel is a non-delegable duty of the shipowner and the fact that he was not negligent does not relieve him from liability if an injury results from an unseaworthy condition.<sup>52</sup>

In the case cited, the responsibility is to provide a seaworthy vessel for the crew. The accident on Calamity involved a shipyard worker. Can he be considered a seaman under the law?

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<sup>52</sup>L. E. Evans, "Maritime Personal Injuries and the Doctrine of Seaworthiness," JAG Journal, no. 19 (Sep-Oct, 1964), p. 13.

Lawlor v. Socony-Vacuum Oil Co.<sup>53</sup>

In 1960 it was held that the warranty of seaworthiness also ran to an employee of a ship repair contractor who was injured on the tank vessel Mobilfuel. The ship was alongside the contractor's pier and her crew was embarked when the accident occurred. While on the vessel, Lawlor was supervising fellow yard workers in the marking and inspection of the internal tank bulkheads for leaks and cracks. As Lawlor descended a ladder from scaffolding, it fell backwards and he fell to the bottom of the tank and was injured. It was clear that the negligence of the contractor's employee caused the accident. However, liability was fixed on the shipowner under the doctrine of seaworthiness. In deciding that Lawlor was doing seaman's work, i.e. repair of the tank bulkheads for leaks was done by the Chief Engineer and crew when the ship was not at a repair facility.

From this case it would appear that the worker injured on Calamity was considered a seaman since his work was the type of work normally done by the ship's crew. But, how could the United States be expected to maintain a seaworthy ship throughout the entire overhaul?

The Supreme Court has held that a land based worker engaged in work traditionally performed by seamen is entitled to the warranty of seaworthiness only when the vessel is in active navigation. The leading case in this area is West v. U.S. (361 U.S. 118, 1960 A.M.C. 15 (1959)). This case stands for the proposition that no warranty of seaworthiness is implied where the vessel is not in active maritime service. The SS Mary Austin after being laid up for several years was activated and taken to Philadelphia for overhaul. During the overhaul, West was injured while working inside a low pressure cylinder of the main engine. West asserted that Mary Austin was unseaworthy. The court, after noting the extensive work that was the subject of the repair contract, concluded that the reason the ship was in the repair yard was to make her seaworthy. Accordingly, it could not be said that the shipowner held the vessel out as being seaworthy. In setting down criteria to determine whether a vessel was in navigation, the court stated: It would appear that the focus should be upon the status of the ship, the pattern of the repairs, and the extensive nature of the work contracted to be done, rather than the specific type of work that each of the numerous shore-based workmen is doing on shipboard at the moment of injury . . .

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<sup>53</sup> Ibid., p. 14.



We therefore, do not believe that the Sieracki (seaworthiness) line of cases is applicable . . . .<sup>54</sup>

The case of the shipyard worker as a seaman on an unseaworthy ship was dropped. However, another shipyard worker was injured when the lifeboat he was working in fell from its davits. Since the warranty of seaworthiness had just been disallowed he brought suit claiming shipowner negligence. Was the United States negligent?

Morrell and Valle v. United States  
193 F. Supp 705 (N.D. Calif. 1960).

Libel under Suits in Admiralty Act and Public Vessels Act against the United States for injuries sustained when a navy vessel's lifeboat, in which the libellants were working, fell from its davits and struck the dock while the vessel was undergoing repairs and inspection . . . .  
. . . Libellants claim that respondent is liable for breach of warranty of seaworthiness and for negligence in failing to supply a reasonably safe place in which to work, and in failing to have a ship's officer present to supervise the provisioning of the lifeboat so that the proper safety appliances would have been used by libellants and their fellow servants . . . .  
. . . The libellants had been loading provisions about ten minutes when a painter entered the boat to paint the Rottmer release gear lever or handle in the boat. After the fall the lever was found in the open or release position, only the top of the lever in the closed position was painted . . . .

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<sup>54</sup> Ibid., p. 15.

. . . The contractor was under contract to make the vessel seaworthy so the United States contended that the libellants as shoreside repairmen, were not entitled to the warranty of unseaworthiness . . .

. . . The Court held the shipowner had general control of the vessel and a full crew of officers and men were aboard. Under these circumstances we hold that there was a warranty of seaworthiness in favor of the crew and shore-based workers.

In a claim for negligence, the injury was not the result of a negligent act of the ship but of the negligent act of a fellow employee.

Both cases of injury on Calamity involved a determination of the status of the vessel. In order to help in future cases, the Commanding Officer directed the ship's division officers to make routine tours of their spaces and report injuries. The question of the seaworthy ship would be decided by the courts as a matter of law. Case law in the past has shown that the United States is under no duty to protect contractors' employees from risks inherent in a job that the contractor has been hired to perform.<sup>55</sup> However, when a shipowner delivers a vessel to drydock he is required to exercise due care to provide a safe place for workers that will come aboard.<sup>56</sup>

Moonlighting of Navy enlisted personnel during overhaul is not uncommon; many work directly for the contractor as long as no conflict of interest is created. Calamity was no exception; crewmembers were working for the contractor, but on other Naval vessels also undergoing overhaul.

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<sup>55</sup> *Sentilles v. Inter.-Caribbean Shipping Corp.*, 361 U.S. 107, 80 Sup. Ct. 173, 4 L. Ed. 142 (1959).

<sup>56</sup> *White v. United States*, 400 F. 2d 74 (C.A. Va. 1968).



An incident occurred on one of the other ships involving crewmembers from Calamity. Several full-time contractor personnel were injured when a stage, erected by the Calamity moonlighting personnel, collapsed. The contractor personnel libeled the Government due to the actions of the naval enlisted personnel.

ALLEN v. UNITED STATES  
178 F. Supp 21 (D.C. Pa., 1959)

Where foreman for independent contractor engaged to make extensive repairs and alterations on government vessel approached government on basis that it needed temporary loan of some of its enlisted personnel in connection with its contract on vessel, and request was granted, and during certain off-duty hours enlisted Navy personnel did some welding for contractor for which they were paid by contractor at approximately same rate as contractor's civilian employees, and enlisted personnel were subject to contractor's immediate direction as to how work should be done, status of enlisted personnel was that of employee of contractor and even if defective staging was erected by enlisted Navy personnel, liability for injuries sustained by a regular employee of contractor because of such defective staging could not be attributed to the government.

A determination of negligence of the United States or unseaworthiness of a Government vessel is determined by the Court based on the pertinent facts of each case. To aid in a determination, all injury reports should include: "a. Name of equipment, age, model, serial number, blueprints, last overhaul, by whom, etc., b. Cause of explosion, c. Status of vessel, d. Contributing negligence of the injured person."<sup>57</sup>

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<sup>57</sup>L.E. Evans, "Maritime Personal Injuries and the Doctrine of Seaworthiness," JAG Journal, no. 19 (Sep.-Oct., 1964), p. 18.

## PILOTAGE

Finally the day arrived for Calamity to leave the shipyard for Charleston, South Carolina. After more than a year in overhaul, the Commanding Officer thought that it would be prudent to use a pilot to travel through the dangerous and heavily travelled East River and New York Harbor. The Captain of Calamity was well advised as to his responsibilities under Navy Regulations:

The Commanding Officer is responsible for the safe navigation of his ship . . . (He) shall pilot the ship under all ordinary circumstances, but he may employ pilots whenever in his judgement such employment is necessary . . . . A pilot is merely an advisor to the Commanding Officer. His presence on board shall not relieve the Commanding Officer . . . from (his) responsibility for the proper performance of the duties . . . concerning the navigation and handling of the ship.<sup>58</sup>

Some ports require that pilots be utilized, an example being the port of New York. In The China, a British vessel was outbound from New York when it struck and sunk the brig Kentucky. "The steamship was wholly at fault. It was not alleged, in the argument here for the appellants, that there was either fault or error on the part of the brig. The case turns upon the effect to be given to the statute of New York, of the 3d of April 1857. At the time of the collision the steamship was within the pilot waters of the port of New York, and was in the charge of a pilot, licensed under this Act, and taken by the master pursuant to its provisions. The pilot's orders were obeyed, and the catastrophe was entirely the result of his gross and culpable mismanagement."<sup>59</sup>

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<sup>58</sup> Harry L. Hall, "The Commanding Officer and Negligent Pilotage - Liability Aspects," JAG Journal, no. 17 (Aug., 1963), p. 123.

<sup>59</sup> Nicholas J. Healy and David J. Sharpe, Cases and Materials on Admiralty, American Casebook Series (St. Paul, Minn.: West Publishing Co., 1974), p. 70.



The Supreme Court in ruling this case found that as Navy Regulations state, the presence of a pilot onboard does not relieve the Commanding Officer of his duties concerning the navigation of the ship. As far as the New York statute is concerned, since Calamity is a public vessel, state compulsory pilotage laws cannot be applied. However, if Federal regulations require that a pilot be taken, it is compulsory, as in foreign ports that have compulsory pilotage. Most foreign nations exempt warships from compulsory pilotage, but it is accepted international law doctrine that public vessels will utilize pilots when entering waters of a foreign nation.<sup>60</sup>

#### UNITED STATES LIABILITY IN MARITIME COLLISIONS

In order to leave the Brooklyn shipyard safely, Calamity was required to cut across the East River to be on the Manhattan side of the river for a safe outbound passage. The current was ebbing at 3 knots when Calamity left the Brooklyn yard. The Captain of Calamity, examining the situation, noticed an outbound vessel farther up river, a fact which compounded the problem with the current. He decided to use a 2/3 engine (10 knots) to move across the swift current and move outbound ahead of the vessel farther up river. The vessel up river observed Calamity crossing the river, immediately slowed and moved to the extreme right edge of the channel to give Calamity as much room as possible. In doing so, the vessel struck and damaged a moored barge. Calamity did not see this collision and continued outbound. Can Calamity be libeled in a suit for a collision

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<sup>60</sup> Harry L. Hall, "The Commanding Officer and Negligent Pilotage - Liability Aspects," JAG Journal, no. 17 (Aug. 1963), p. 124.

that did not even involve her? As previously stated, the Congressional adoption of broad language was utilized to authorize suits against the United States for damages caused by a public vessel without being unduly restrictive.<sup>61</sup>

The No. 7  
61 F. Supp 471 (D.C. N.Y. 1945)

S.S. Santiago proceeding down the East River first observed DD-152 close aboard to port (starting out from the Brooklyn Navy Yard), and was traveling at such speed and on such an apparent heading as to cause the pilot of the Santiago to fear that there would be a collision between the two vessels, and accordingly he put his engines full astern and ordered hard right rudder almost simultaneously, in order to avoid such collision, and his decision was made in an emergency.

As soon as it was seen on the Santiago that the danger of collision with the DD-152 was no longer present, the Santiago sought to avoid collision with the Drill Boat No. 7 and the dynamite scow, by moving full ahead under left rudder with the help of the tug Timmins made up on the starboard bow, which caused the Santiago to swing to her own port; this brought her starboard quarter in contact with the dynamite scow and the Drill Boat No. 7.

The impression derived from the pilot of DD-152 testimony and manner on the stand was that the vessel in his charge was entitled to proceed, pretty much as she chose, and that other craft of civilian status

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<sup>61</sup>Canadian Aviator v. United States, 324 U.S. 215, 65 Sup. Ct. 639, 89 L. Ed. 901 (1945).



must govern themselves accordingly. The Commanding Officer and Executive Officer indicated that as the 152 was about halfway across the river they noticed the Santiago to be overtaking 152 rapidly. The court had difficulty understanding, according to log books, how the Santiago, making four and one-half knots over the ground could be overtaking a destroyer moving at ten knots. The United States was found at fault.

The mere presence of a public vessel in the vicinity of a maritime collision does not necessarily mean the collision was caused by the vessel.

GULF OIL CORPORATION v. UNITED STATES  
295 F. Supp 696 (D.C. R.I. 1969)

These proceedings in admiralty arise out of a collision between the M/V S.E. Graham and the S.S. Gulfoil between Bull Point, Jamestown, and Fort Adams, Newport. As a result of said collision and the resulting fire, eighteen persons were killed, many persons were injured and both of said vessels were badly damaged.

The Coast Guard buoy tender Laurel was headed southbound passing Rose Island heading to replace the Bull Point Buoy. As Laurel passed Rose Island there was a noticeable reduction in visibility, she began sounding fog signals and slowed speed, set a fog navigation team and bow lookout. Astern was the Gulfoil at about 1000 yards, closing rapidly. The Captain of the Laurel observed an inbound vessel coming up the channel, and that the Gulfoil was gaining on the Laurel, decided that the Laurel should leave said channel so that said vessels could pass each other in a normal meeting situation. Laurel steered towards the Bull Point Buoy and passed to the right of it at 20-25

yards at a speed of 1-2 knots, bare steerageway.

The Gulfoil, outbound, slowed to 5 knots and commenced sounding fog signals when it was about 1000 yards below Rose Island. The Captain used the radar but its characteristics were such that it could not distinguish between two objects on the same bearing 65 yards apart or 2 objects at the same range less than 5 degrees apart. The Captain of the Gulfoil looked at the radar and asked the pilot if it would be safe to take Bull Point Buoy on either side, he then went to the bridgewing to look for the buoy after stating, "I wish he would get out of there".

The pilot indicated it was time for the Gulfoil to turn but the Captain stated that they were not to the buoy yet. Shortly after this, fog signals were heard on the starboard bow. Gulfoil ordered engines stopped, another fog signal, ordered engines full speed astern. The inbound vessel sounding fog signals had slowed and moved to the right side of the channel approaching Fort Adams.

The collision occurred about 500 yards east of said Bull Point Buoy (100 yards to the east of the middle of the channel).

In the instant case it is clear beyond question that the Gulfoil was guilty of faults which were sufficient to cause said collision. The Laurel in leaving said channel did not obstruct or interfere with the navigation of Gulfoil, or cause her to collide with S.E. Graham. It cannot be said that the Laurel owed any duty to Gulfoil to remain in said channel and thereby assume the risk of being run down by the Gulfoil which had been overtaking her.



## PROPORTIONAL FAULT RULE

Dusk had fallen over New York harbor as Calamity steamed downriver with Manhattan to starboard and Governor's Island to port. The Captain of Calamity observed vessels at anchor between Governor's Island and the Statue of Liberty; a quick glance at the navigation chart indicated shoal water adjacent to Governor's Island and that the eastern most anchored vessels appeared to be in the channel. The Captain decided to pass between the anchored vessels and the Statue of Liberty. Underestimating the current from the Hudson River, Calamity began being set to port of the intended track, consequently, towards an anchored vessel. The Captain ordered right rudder but it was too late. The stern of Calamity struck the bow of the anchored vessel. No significant damage occurred and after a period of time Calamity continued to sea. What facts are used to determine the degree of liability of Calamity as a result of the collision?

SCOTTISH SHORE LINE, LTD. v. UNITED STATES  
182 F. 2d 876 (C.A. N.Y. 1950)

Collision occurred on February 15, 1943, at about 1:10 or 1:12 a.m. between the Lanarkshire and the United States Destroyer Hobby. The general vicinity of the collision was the main ship channel in the Upper Bay area of New York Harbor between Governor's Island and Bedloe's Island (the Statue of Liberty).

Lanarkshire contends she anchored in the "Collier" anchorage and did not thereafter drag her anchor or shift her position (except, of course, as she swung to her anchor with the wind and tide) until she was struck by the Hobby on February 15, 1943, at about 1:10 or 1:12 a.m.. United States contends that at the time of the collision she was about athwart the middle of the channel approximately abreast of the South light on

Governor's Island.

When the Hobby was more than two ship lengths from Lanarkshire, the Commanding Officer ordered the rudder 30 degrees right, his intention then being to leave that vessel and those to the west of her on the Hobby's port, travelling close to Bedloes Island. However, because the force of the NW wind, the Hobby did not respond, but made leeway toward the Lanarkshire. Maneuvering with the Hobby's engines could not prevent her port quarter from drifting onto the Lanarkshire's stern. Then, because the Hobby was headed for a third vessel lying at anchor somewhat westward of Lanarkshire, full reverse was ordered, and the Hobby came astern to contact the port side of the Lanarkshire forward of her bridge.

Evidence supports the finding that anchored vessel had remained within anchorage area until collision but that even if it had dragged its anchor and was in the channel, sufficient navigable water remained between anchored vessels and island to permit destroyer to pass, and hence court properly determined that destroyer alone was at fault.

In this case destroyer Hobby was alone at fault and thereby libeled the government for all damages. The amount of payment for damages is now proportioned to the degree of fault. In the United States v. Reliable Transfer Co., Inc. the Supreme Court held that, "when the fault of two or more parties contributes to damage in a maritime collision or stranding, liability is to be allocated among the parties in proportion to their comparative degrees of fault, and liability for such damage is to be allocated equally only when equal fault exists or when it is not possible to measure



fairly the respective degrees of fault."<sup>62</sup> However, old principles die hard as in Mother Grace, Inc. v. United States, A.M.C. 44 (D.C. R.I. 1974):

Here, a fishing vessel approaching a United States Navy oiler in a crossing situation was grossly and admittedly at fault. She violated Article 19 Inland Rules (failure to keep out of the way as burdened vessel), Article 23 Inland Rules (failure to slow or stop on approaching privileged vessel), Article 29 (failure to keep proper lookout as helmsman abandoned wheel for period of 40 seconds, shortly before collision). The Court found the oiler mutually at fault because her Captain's sounding of the doubt signal, Article 18, two minutes and 1,200 yards before the collision was considered unreasonably late. Despite the fact that the oiler's fault was minimal relative to the gross violations and monumental lack of due care on the part of the fishing boat, the Court obliged to rule, notwithstanding its evident recognition of the inequity of the result, that the Government had to share equally the extensive damage sustained by the fishing vessel.<sup>63</sup>

#### NEGLIGENCE AS A FACTOR

As in the collision of Calamity, negligence in the operation of the vessel is a key factor in the determination of fault. The facts involved in every mishap are analyzed and determinations of negligence, contributory negligence or exercise of reasonable care are based on the facts of the case.

#### WOODBURY v. UNITED STATES 75 F. Supp 829 (D.C. Mass. 1948)

United States Submarine, Sea Owl operating in the submarine operating area off of Ipswich, Massachusetts, with a submarine rescue vessel on the surface with the International Signal Code signal "HP" which means, "Submarines are exercising in this vicinity; you should navigate with great caution", was caught in a dragnet of fishing vessel Ariel.

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<sup>62</sup>W.H. Ise, "Admiralty Law: Collision: The Admiralty Rule of Equal Division of Damages is Replaced by the Rule of Damages in Proportion to Comparative Fault," JAG Journal, no. 29 (Fall, 1976), p. 111.

<sup>63</sup>Ibid., p. 112.

United States liable for damages caused by negligence of personnel of public vessels, evidence established that collision between fishing vessel and submarine was due to negligence of Commanding Officer of submarine in submerging on course which he knew or should have known from observation of course, speed and bearings of libellant's vessel would bring submarine into dangerous proximity of the vessel and in failing to observe custom prevailing in area for submarines to warn fishing vessels of danger.

Failure of fishing vessel to display any signal that it was dragging fishing net was not a breach of any statutory duty and did not constitute negligence contributing to collision.

UNITED STATES v. THE AUSTRALIA STAR  
172 F. 2d 274 (C.A. N.Y. 1949)

Where naval vessel assigned as escort for merchant ship steaming under escorts' orders, blacked out and on prescribed course, had duty to get merchant vessel safely to destination and had authority to give emergency wartime orders to any allied merchant vessel and became aware of possibility of collision with another vessel four minutes before accident, but did not warn vessel in its charge or order course change or lights or give warning to second vessel, conduct of escort was negligent for which United States was liable not only to escorted vessel, but to second vessel for damages sustained in collision. Failure of privileged vessel operating blacking out in wartime and under escort on high seas to see and recognize running lights of burdened vessel and to display her own lights or change course or take other action necessary to avoid collision was fault and contributory cause.



JOHNSON v. UNITED STATES  
378 F. 2d 732 (C.A. Calif. 1967)

The fishing vessel Sea Hunt came upon the foundering vessel Bill Kettner off San Clemente Island and took her in tow on March 18, 1962. The Bill Kettner was a much larger vessel so the Sea Hunt was making little headway in view of the 14 knot wind and rough sea. The Sea Hunt sent a flashing light SOS to Somers 3½ miles away. The Somers altered course to proceed towards the Sea Hunt and acknowledged the SOS. But the SOS continued, the Commanding Officer of Somers concluded that the continuing SOS indicated the presence of a person or persons in desperate need of assistance. He determined to proceed to the scene as rapidly as possible, 20 knots, position the Somers dead in the water alongside and windward of the source of the signals and prepare to effect an immediate rescue of persons who might be in the water or on a sinking craft, man-over-board stations were manned. The Somers reached the immediate area of the Sea Hunt on its intended course. While the bow of the Somers momentarily concealed the Sea Hunt from observers on the Somers bridge, the two vessels collided and the Sea Hunt sank.

The Court held in favor of the Government that the continuing SOS signal indicated immediate danger and the speed of 20 knots that otherwise would have been excessive and negligent, was not.

PHILIPPINE LINES, INC. v. SUBMARINE USS DANIEL BOONE (SSBN-629)  
475 F. 2d 478 (C.A. Va. 1973)

Near high noon on a bright day, with visibility unlimited, the United States nuclear powered submarine Daniel Boone (SSBN-629) turned into collision course with M/V Philippine President Quezon. Immediately prior to the collision, the submarine was proceeding at flank speed

(15-16 knots) in usually congested waters (just out of Thimble Shoals Channel) and the Quezon was engaged in picking up a pilot off Cape Henry, Virginia and was highly unmaneuverable. So found the district court. Negligence of the submarine was the sole cause of the collision.

#### STATUTORY RULES AND COLLISIONS

Calamity's passage to Charleston was uneventful once clear of New York, but as she approached Charleston she was greeted by the frequently present early morning fog. Visibility was about three nautical miles when the Commanding Officer ordered the Restricted Visibility Detail to be set and the ship's speed decreased to 5 knots. The Captain of Calamity was well aware of the statutory requirements of Inland Navigational Rules of 1980 and International Regulations for Preventing Collisions at Sea, 1972, in regards to the conduct of vessels in restricted visibility. Posting of the Restricted Visibility Detail meant extra lookouts were posted, in excess of the requirement of Rule 5 of both sets of rules. In compliance with Rule 6, the Captain of Calamity slowed to 5 knots, which he determined to be a "safe speed."<sup>64</sup> Many factors were taken into this determination, including visibility, traffic density, maneuverability, wind, sea, currents, light and radar efficiency.<sup>65</sup> If involved in a collision, these considerations and others would be used by the Court to determine compliance with the Rules and thereby fault or degree of fault in a damage

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<sup>64</sup>Safe speed - Every vessel shall at all times proceed at a safe speed so that she can take proper and effective action to avoid collision and be stopped within a distance appropriate to the prevailing circumstances and conditions. See William H. Tate, A Mariner's Guide to the Rules of the Road (Annapolis, Maryland: Naval Institute Press, 1982), p. 94.

<sup>65</sup>*Ibid.*, p. 95.



determination. In the scope of this paper it would be impossible to analyze cases involving collisions resulting from violation of each rule. Therefore, only Rule 19, Conduct of Vessels in Restricted Visibility will be looked at. Whether a ship is involved in independent steaming or steaming in formation, the responsibility to comply with the Rule is strict. "U.S. military vessels exceeding a safe speed due to operational commitments will be found at fault by the courts if the excessive speed contributes to a collision. The owners, the taxpayers of the United States, must pay the damages."<sup>66</sup>

UNITED STATES v. M/V WUERTTENBERG  
219 F. Supp 211 (D.C. S.C. 1963)

The two vessels involved in the collision herein are the USS Swerve, a wooden minesweeper and the German M/V Wuerttemberg, a steel motor vessel, 9270 DWT, one propellor driven by two diesel engines. Both the Swerve and the Wuerttemberg had an American-built Pathfinder RCA radar. If in good order, it could have picked up Fort Sumter at eight miles, and a ship like the Swerve at eight miles. The Swerve was equipped with an SPS-5B radar with a graduated scale; if in good order, it could have picked up a ship the size of the Wuerttemberg at 25,000 yards or 12½ miles.

June 25, 1958, the day of the collision began clear; it was dead calm. A bank of dense fog was encountered lying like a belt across the channel from the Fort Sumter or west side, to the Sullivans Island or east side. The Swerve departed the old Mine piers on the Ashby River, in clear weather and her navigating officer could see the TV tower by the Cooper

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<sup>66</sup>Ibid., p. 56.

River Bridge and the after range on Fort Sumter. As she proceeded down the South Channel, the bearing takers reported that they were not able to see the navigation marks, and the Captain could no longer see Sullivans Island. This was logged at 0611. She reduced speed to 9 knots, then to 4 knots at 0611. She was then between Buoy 27 and Buoy 25 in South Channel.

The radar navigation team was directed to go into operation. The bow telephone talker, whose regular station was at the bow capstan, moved forward next to the bow lookout on the very bow. A top lookout was stationed on the highest part of the ship, the search light platform thirty-forty feet above the water. Both the bow and top lookouts had binoculars.

A Lieutenant Commander had the conn when the first report on Wuerttemberg was made, and changed the course of the ship to 148 degrees, but after the second report was made, the Commanding Officer of the Swerve took the conn. By this time the Wuerttemberg was visible coming in at 345 degrees relative or 350 degrees relative, or about 10 degrees on the port (left) side, her bow coming straight toward Swerve. The Commanding Officer ordered all back full emergency and left full rudder when backing to swing the Swerve's bow to the right. Three blasts were ordered and blown on the Swerve's whistle to indicate "my engines are going full astern" under the Pilot rules. The Commanding Officer of the Swerve heard one short blast from the other vessel, indicating she was turning right. The other vessel began to swing right and while the Swerve had been making sternway, her Commanding Officer then ordered all astern full and right full rudder to soften the blow and five blasts of the whistle were sounded. As the larger ship and small ship swung, the flare of the port bow of the Wuerttemberg brushed against the port



side of the Swerve amidships, knocked in the boats and davits, knocked over the Captain injuring him and doing substantial damage to the Swerve but very little damage to the Wuerttemberg.

After the lookout reported a whistle ahead (the Swerve's fog whistle) the Pilot of the Wuerttemberg did not stop his engines. He had been on full ahead from 0533 (upon passing Buoy 2C) until 0620, reduced to half ahead or 8.2 knots at 0620 and just before the collision, cut his engines to slow ahead and dead slow ahead. The engine room log of the ship gives 0622 for three signals, forward slow, forward very slow, forward slow. The smooth deck log shows full ahead at 0623 and shows the collision at 0623. The Pilot on the Wuerttemberg went hard right and blew one short blast for a port-to-port passing. He did not then regard it as an in extremis situation and thought he had plenty of room to get to the right of the Swerve. The Swerve was not doing anything, she was just stopped, sitting there.

The bridge lookout on Wuerttemberg was absent from his post while dipping the flag above Buoy No. 20, and his post was near the noisy exhaust stack. The question of current, no matter what it was or how defined, is of no importance on the question of the speed of the two meeting vessels and on whether in view of the visibility that speed was moderate.

The logs of the Swerve were all produced at the trial. The rough deck log of the Wuerttemberg which was the original book of entry, from which the smooth log was made up after the accident, was not produced. It was demanded at the depositions taken in February 1959, a few months after the accident. It had been aboard the vessel but was thrown overboard.

Those in charge of the navigation of the Wuerttemberg knew, or if they had been keeping a good lookout, should have known, that there was a fog bank ahead and their speed on entering or on nearing that fog bank was excessive.

Those in charge of the navigation of the Wuerttemberg should have sounded the fog bank with their radar for other vessels and should have reduced speed and stopped if necessary until this had been done.

After the Wuerttemberg began sounding fog signals, she should have reduced her speed through the water to bare steerage way.

After those aboard the Wuerttemberg heard the fog whistle of the Swerve, it was their statutory duty immediately to stop their engines. Failure to do so constituted a statutory fault under the rule of The Pennsylvania, 19 Wall 125, 22 L. Ed. 148 and cast upon the Wuerttemberg the burden of proving that this fault could not have contributed to the collision. Therefore, the collision between Wuerttemberg and the Swerve, and the consequent damages and injuries, were due solely to the fault, negligence and want of care on the part of the Wuerttemberg and such faulty navigation was the sole and proximate cause of the collision, the Swerve and those in charge of her, were not at fault or guilty of any negligence in the handling of the Swerve which caused or contributed to the collision.

USS WHITEHURST (DE-643) v. M.S. HOYANGER  
265 F. Supp 730 (W.D. Washington N.D. 1967)

Litigation arises out of a collision between the USS Whitehurst and the Norwegian flag M/S Hoyanger on 16 January 1965 at the entrance to the harbor of Vancouver, British Columbia within the territorial waters of Canada. The Whitehurst owned and operated by the United States was



engaged in various fleet exercises with the USS Marshall (DD-676) and USS Brannon (DE-446) in the general area from Seattle, Washington to Vancouver, British Columbia. The Whitehurst approached Vancouver in the late afternoon of January 16, 1965 with the intention of entering the harbor for the night. Dense fog was encountered and when the fog failed to lift after several hours, the Whitehurst commenced her passage into the harbor. The Whitehurst was equipped with a type SPS-5C radar. One navigational team was stationed in Combat Information Center and through the use of a radar repeater another navigational team was on the bridge.

The Hoyanger was equipped with an RCA type CRM-NIA-75 Serial 9921 radar, manufactured in 1950, which was in use at all times before the collision. Onboard was a Canadian and American pilot for the voyage from Vancouver to Seattle.

Each vessel was aware of the presence of the other for some period of time prior to the collision. Signalkeeper at the First Narrows Signal Station on the Lions Gate Bridge informed both vessels.

Approximately one-half mile from Lions Gate, the engines of Whitehurst were stopped at 1845, as the vessel lost way she was set to the north. The engines were next operated for about one minute, but this was ineffective to put way on the vessel. Upon hearing Hoyangers fog signal the engines were again stopped. At this point, the Whitehurst received the full force and effect of the five knot ebb current, which set her to the north across the course being traversed by the Hoyanger and the two vessels collided.

About the time of passing under Lions Gate, the Hoyanger changed course and stopped her engines, having lost the Whitehurst on radar. At about her time 1849, the Whitehurst was sighted visually at a distance of 500-800 feet. Hoyanger reversed her engines and rudder ordered hard right. Immediately thereafter, Hoyanger's engine was stopped and rudder ordered hard left in an attempt to avoid collision. Collision occurred at 1850. It is well settled that a vessel should remain at her dock rather than commence a voyage when she cannot proceed at a moderate speed in conditions of restricted visibility. The navigation of the Hoyanger was characterized by cocksure indifference, and it was a fault for the Hoyanger to depart and attempt passage of the First Narrows under the conditions then existing.

The Hoyanger was at fault for failure to maintain a proper lookout in violation of Rule 29 of the International Rules. A lookout was posted in the proper position of the Hoyanger but a substitution of lookouts was made approximately two minutes prior to the collision at a time when the vessel was proceeding at a speed of approximately ten knots over the ground in heavy fog with extremely limited visibility and in a channel where heavy traffic was known to exist.

The Government charges that the Hoyanger's radar was not properly used, and the Hoyanger charges that the navigators of the Whitehurst failed to maintain good fixes, which the Court assumes means a failure to properly use Whitehurst's radar equipment. The Court gathers from the testimony that in heavy fog it is difficult for a vessel to obtain a target on her radar screen beyond the First Narrows Bridge, either inbound or outbound. The pilot of the Hoyanger, so testified, and the



experience of the radarman on the Whitehurst seems corroborative, and the Court so finds. In such circumstances the Court is not prepared to find that the radar of either vessel was properly used.

The Court cannot place its imprimatur on the navigation of either vessel. Both were at fault and substantially so, but inasmuch as the Whitehurst allowed herself to drift across the course of the Hoyanger, the Court finds Whitehurst 60 percent at fault and the Hoyanger 40 percent at fault.

#### WAKE DAMAGE

Calamity navigated through the fog at safe speed and as she approached Buoy 2C off of Charleston, the visibility greatly improved as the early morning fog lifted. Calamity picked up the Charleston pilot at Buoy 2C and headed for the breakwater at full speed. All onboard Calamity were anxious to be reunited with loved ones that would be waiting on the pier at the Naval station. As Calamity was approaching the breakwater, the area was crowded with shrimp boats and sport fishermen. The pilot recommended a speed reduction to two-thirds ahead but the Captain of Calamity, wanting to be at the Naval Station precisely as scheduled, slowed to ahead standard. The pilot voiced his displeasure with the ship's speed and again recommended a reduction in speed, claiming that many vessels make claims against the Government for wake damage when a ship passes at a relatively high speed, and that it would be in the Captain's best interest to reduce speed. The United States is liable for damages caused by negligence of its personnel as well as damages caused by vessels as a physical instrument.<sup>67</sup> Calamity

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<sup>67</sup>Woodbury v. United States, 75 F. Supp 829 (D.C. Mass. 1948).

slowed to two-thirds speed and proceeded into Charleston Harbor.

NEILSON-MORAN MARINE CORP. v. UNITED STATES  
239 F. Supp 94 (D.C. S.C. 1965)

Libelant Neilson-Moran Marine Corp. owner of the tug Margaret, respondent  
United States of America material owner of the Army tug ST-2198.

On the evening of August 19, 1957 the tug Margaret was proceeding  
north on the Intracoastal Waterway near Little River, South Carolina,  
pushing barge CBL-1504, which was loaded with paper pulp. The  
Margaret was being navigated by her Master, who was navigating this  
portion of the Waterway for the first time.

On the same evening, the Army tug ST-2198 was southbound in the  
Waterway without a tow.

At the town of Little River, South Carolina the Intracoastal Waterway  
makes a slight bend to the east. On the west side immediately opposite  
the bend are a series of docks and slips at which pleasure crafts and  
small fishing boats are frequently moored. On the east bank, opposite  
the northern most slips, there is an aid to navigation referred to as  
Lighted Beacon No. 9.

About 9:00 P.M. the tug Margaret experienced some difficulty as she  
approached the east edge of the channel adjacent to Lighted Beacon  
No. 9. Apparently her barge went aground causing her stern to swing  
westward out into the channel. A tug following, the Huck Finn, wit-  
nessing this and the ensuing events, stopped her engines and tied up  
to some dolphins.

The Margaret's stern swung half-way to the docks so as to prevent  
another vessel from passing between the docks and the Margaret's stern.



The Army tug approached Little River from the north, slowed after observing that the Margaret's stern was blocking passage in the channel. The Margaret then maneuvered so as to push her stern more or less parallel to the east bank, thereby clearing the channel for the passage of the Army tug. The Margaret and the tug exchanged one-short blast on their whistles, and the Army tug proceeded ahead at dead slow speed, passing the Margaret and her barge to port as slowly as possible, without incident. At no time was the Army tug in collision with the dock, the cabin cruiser moored thereto, or the tug Margaret or her barge. After the Army tug had safely passed, the Margaret's stern again swung out into the channel, and she made a 160 degree turn which left her facing upstream instead of downstream. As she swung around in the channel, the Margaret struck a piling near the docks on the west side of the channel and created wave wash, which swamped a cabin cruiser moored at the docks. This is essentially a case of wave wash damage, which is governed by principles of admiralty collision law.

The Army tug was navigated properly with due care for the moored cabin cruiser and the dock; it is not liable to the owner of the cabin cruiser. She damaged neither the dock, nor the cabin cruiser, nor the Margaret. She collided with no one, and it was not her wave wash that caused the alleged damage. She was navigated properly and with due care for the tug Margaret and her barge. The Army tug is in no way at fault. There being no liability of the United States to the cabin cruiser, the dock, or the Margaret, she cannot be a tort-feasor. Libellant, therefore, has no cause of action for contribution or otherwise, and its suit must be dismissed.

LADD v. UNITED STATES  
97 F. Supp 80 (D.C. Va. 1951)

In suit against the United States for damages to sloop when wake of Coast Guard Cutter proceeding in opposite direction caused sloop to roll and wallow with such violence as to snap her mast, evidence established that speed of cutter, whatever it may have been, was too great in view of the obvious plight of sloop, becalmed just to starboard of mid-channel of the river and cutter's proximity to the sloop.

The Coast Guard Cutter, i.e. the United States, found at fault for excessive speed.

PERSONAL INJURIES

After arrival back in their homeport of Charleston the crew was anxious to show off the newly refurbished ship to their families, so a Dependent's Cruise was scheduled. In preparation for the cruise, members of the crew were assigned the duties of safety monitors. The day of the cruise arrived, guests were briefed pertaining to safety regulations to be followed on the ship, and safety monitors were stationed throughout the ship, especially at dangerous areas such as the ship's ladders. As Calamity put to sea, the water was choppy with long swells but not bad enough to cause too much discomfort to the passengers. Everything was going well until a series of swells caught Calamity broadside. The ship rolled violently causing several civilian guests to fall, resulting in some minor injuries; however, a seaman working on deck was thrown overboard. Calamity executed a man overboard maneuver and recovered the lost seaman. If the seaman had been lost, what action could his legal representatives have initiated and what liability does the Government have with regards to



the injured civilians?

DOBSON v. UNITED STATES  
27 F. 2d 807 (C.C.A. N.Y. 1928)

Libel filed by the legal representative of a deceased naval officer, who lost his life by the sinking of the United States Submarine S-51 in collision with the City of Rome on the high seas during the night of September 25, 1925. It alleged that the submarine was unseaworthy in that it was so constructed that the navigation lights required by law could not be, and were not, displayed and that this defect caused the aforesaid collision and consequent loss of life, without contributory fault on the part of the deceased officer.

Verbally, there is nothing which excludes liability for damage to property or person of officers or crew.

Seamen on the merchant fleet of the United States are given a right of action in case of injury or death, by section 33 of the Jones Act; this has apparently been treated as an alternative remedy coupled with the Act for Wrongful Death on the High Seas.

Chapter 3, title 38 of U.S. Code provides an elaborate pension system for personal injury and loss of life incurred by officers and enlisted men in the Navy. If it had been the purpose to change that policy as respects officers and seamen of the Navy injured by the unseaworthiness of a public vessel, or by the fault of another, because that is what in the end it comes to, we cannot think it would have been left to such general language as is to be found in 46 U.S.C.A. section 781.

FERES v. UNITED STATES<sup>68</sup>

The Court held in Feres v. United States, that a soldier could not sue under the Federal Tort Claims Act for injuries which "arise out of or are in the course of activity incident to service", 340 U.S., at 146. Among the principle reasons articulated for doing so were: (1) the absence of an analogous or parallel liability, on the part of either an individual or a state; no individual has power to mobilize a militia, no State had been held liable to its militiamen; (2) the presence of a comprehensive compensation system for service personnel; (3) the dearth of private bills from the military; (4) the distinctly federal relationship of the soldier to his superiors and the Government, which should not be disturbed by state laws; and (5) the variations in state law to which soldiers would be subjected, involuntarily, since they have no choice in where they go.

BEAUCOUDRAY v. UNITED STATES  
490 F. 2d 86 (C.A. La. 1974)

Action was brought under the Federal Tort Claims Act for damages for the alleged wrongful death of plaintiff's son who, while on active duty with the Coast Guard, fell overboard from Coast Guard Cutter and drowned. The United States District Court dismissed the action and the Court of Appeals held that Federal Tort Claims Act does not extend to death of servicemen arising out of or in the course of activity incident to their military service, and that claim was not cognizable

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<sup>68</sup>Cited in E. B. Wright, "The Growth of the Federal Claims Act," JAG Journal, no. 24 (May-June, 1970), p. 151.



under the Suits in Admiralty Act or the Public Vessels Act, based on Feres v. United States. The Federal Tort Claims Act is not extended to servicemen when the death or injuries complained of arise out of or in the course of activity incident to their military service.

The civilian guests injured on Calamity have available the same tort actions against the United States as they would have against a private vessel. Visitors Day should require special preparations and precautions:

Brow accidents are the most frequent and by far the most serious. In one case, a group of visiting civilian guests was boarding a cruiser at an East Coast port. Because of a slight delay in the party's arrival time the ship's lines had been singled-up. As the last two visitors were crossing the brow the ship moved out, almost imperceptibly, and the end of the brow slipped off the pier, throwing the guests into the bay.

Coamings are also the source of many accidents. When groups of visitors, distracted by the excitement of being onboard a man-of-war, are permitted to proceed unescorted along dimly lighted passageways, it is almost inevitable that one of them will fail to notice the coaming between compartments, trip over it, and fall. One case involved an elderly visitor to a destroyer at a West Coast port, who fell over a coaming while proceeding unescorted along a passageway and suffered a fractured hip, an injury of serious consequences for an older person. A few days later, at another California port, a four year old tripped over a hatch coaming on board a cruiser and suffered a laceration of the forehead.

Ladder accidents probably run third in frequency and severity.

Female guests, in particular, should be warned of the ladder danger as they board. In a reported case, a well-meaning Chief advised all female visitors to remove their shoes before descending ladders in his ship. The combination of the well-used ladder rungs and slippery nylon hosiery caused two of the visitors to fall, notwithstanding. In descending ladders the tall visitor<sup>69</sup> sometimes also runs the risk of striking his head on the overhead.

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<sup>69</sup>W. H. Thorton, "Shipboard Accidents," JAG Journal, no. 16 (July-Aug, 1962) pp. 97-100.

## FLEET OPERATIONS

As part of the work up for deployment, Calamity participated in various fleet exercises. One exercise involved the formation of a carrier battle group, consisting of an aircraft carrier and thirteen escorting units dispersed in a circular screen around the carrier. The exercise was taking place in the Jacksonville Operating Areas. Many merchant ships coming north through the Straits of Florida had to pass close to or through the formation. Units in the screen were ordered to act independently to avoid shipping. The screen formation was changed many times throughout the night in response to flight operations on the carrier. During one such change, Calamity was proceeding to her new station at 20 knots, the speed ordered by the Officer in Tactical Command. Calamity was overtaking a cruiser to starboard when the bridge team observed a civilian tanker crossing the cruiser's bow, moving from port to starboard. The Officer of the Deck ordered hard right rudder and narrowly avoided a collision with the tanker. What would be the liability of the United States to a vessel passing through a naval formation, if a collision were to occur?

THE RUCHAMKIN  
141 F. Supp 97 (D.C. Va. 1956)

Reciprocal libels between the United States and owner of tanker, which collided with destroyer escort of the United States for ship injuries, libels against the owner of the tanker on death claims, and petition of the owner of the tanker for exoneration or limitation of liability. The USS Ruchamkin and the tanker Washington, of Texas Oil Co., collided in the Atlantic about fifty miles off the coast of Virginia, just below Cape Henry, soon after two o'clock in the morning of November 14, 1952



with resulting loss of life and personal injuries as well as damages to both ships. Throughout the night the weather was fair, the sky clear, and the wind light, with a smooth sea. A fast destroyer escort, the Navy ship was joining, from the rear, a formation of ten other naval vessels moving westwardly in an amphibious operation aimed at the Virginia shore. The Washington, out of a Gulf port and bound for Philadelphia, was on a northerly heading and had passed through the screen of the formation as it slowed to let her through. Previously hidden from each other by an intervening heavy vessel of the main body, the Ruchamkin and the tanker met as the tanker crossed ahead of, and as the Ruchamkin on the off side and at top speed was overtaking, the intervening ship.

Assuming, as the Government asserts, that the tanker had been apprised by public notice of the Navy's plan for the exercise Seascope, the Court held she was not thereby burdened more heavily than to anticipate the appearance of the Navy ships and to avoid unnecessary interference with them.

Therefore, the tanker in not at once yielding to the flotilla, in not going astern of the USS Corry or the USS Lloyd, did not violate the right hand rule. While the Officer in Tactical Command's decreases of speed were purposed, commendably enough, to minimize the dangers incident to the meeting, those dangers sprang principally from the Navy's desire to maintain a unified formation, a unity which demanded occupancy of almost twelve square miles of the sea at all times and which had embarrassed the Washington.

The court will on presentation enter a decree in each of the death

suits and in the limitation proceeding exonerating the Washington and The Texas Company, and will pass a decree in The Texas Company libels fixing liability upon the United States in accordance with the views herein expressed.

#### RESCUE AT SEA

During the return voyage to her homeport, Calamity picked up a distress signal from a civilian yacht fifty miles away. The Commanding Officer turned his ship and increased speed to close the distressed vessel as fast as possible. Calamity arrived at the last known position of the distressed vessel two hours after receiving the signal. No yacht could be seen visually or on radar. Calamity began an expanding square search of the area. Almost at dusk, Calamity found the small life raft of the yacht with three cold but safe passengers. Calamity took the passengers aboard and continued enroute Charleston. What obligation, if any, was Calamity under to go to the aid of the civilian yacht?

#### 46 U.S.C.A. 728: Duty of master to assist persons in danger

The master of person in charge of a vessel shall, so far as he can do so without serious danger to his own vessel, crew, or passengers, render assistance to every person who is found at sea in danger of being lost; and if he fails to do so, he shall, upon conviction, be liable to a penalty of not exceeding \$1,000 or imprisonment for a term not exceeding two years or both.

#### 46 U.S. CA. 731 Applicability to ships of war

Nothing in sections 727-730 of this title shall be construed as applying to ships of war or to Government ships appropriated exclusively to a public service.

Obviously, Calamity is not governed by these sections, so what obligation is there?



The Third Law of the Sea Conference proposed restrictive language to require the commanding officers of ships:

- (a) to render assistance to any person found at sea in danger of being lost;
- (b) to proceed with all possible speed to the rescue of persons in distress, if informed of their need of assistance, in so far as such action may be reasonably expected of him;
- (c) after a collision, to render assistance to the other ship, its crew and its passengers, and where possible, to inform the other ship of the name of his own ship, its port of registry, and the nearest port at which it will call.<sup>70</sup>

However, this does not bind Calamity except under customary law or tradition. The binding authority to aid can be found in Navy Regulations:

0925. Assistance to Persons, Ships and Aircraft in Distress

- 1. Insofar as he can do so without serious danger to his ship or crew, the commanding officer or the senior officer present as appropriate shall:
  - a. Proceed with all possible speed to the rescue of persons in distress if informed of their need for assistance, insofar as such action may reasonably be expected of him.
  - b. Render assistance to any person found at sea in danger of being lost.
  - c. Afford all reasonable assistance to distressed ships and aircraft
  - d. Render assistance to the other ship, after a collision, to her crew and passengers and, where possible inform the other ship of his identity.<sup>71</sup>

#### FOREIGN CLAIMS

After completion of workups, Calamity deployed to the North Atlantic as part of a NATO Battle Group. Upon entering the waters of the Federal Republic of Germany, one of the United States vessels of the Battle Group was involved in a collision with a German merchant vessel. The merchant

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<sup>70</sup> Burdick H. Britten, International Law for Seagoing Officers (Annapolis, Maryland: Naval Institute Press, 1981), p. 101.

<sup>71</sup> United States Navy Regulations (Washington, D.C.: United States Government Printing Office, 1973), p. 39.

vessel sank with loss of almost the entire crew. What legal action could the survivors or legal representatives of the deceased have held against the United States?

SHAFTER v. UNITED STATES  
273 F. Supp 152 (D.C. N.Y. 1967)

On February 10, 1964, an American Government vessel, the USNS Blue Jacket, collided with a fishing boat, the M/V Dirk, on the Weser River in territorial waters of the Federal Republic of Germany. Six members of the Dirk's seven man crew were killed; the seventh survived, but suffered physical injuries. In this lawsuit, brought on November 16, 1965, by the surviving crew member and a representative of those whose lives were lost, recovery is sought from the United States under the Public Vessels Act for the pain, suffering and other damages attendant upon the deaths and personal injuries. The Government has moved for summary judgment dismissing the suit, asserting that the matter has been withdrawn from the courts' subject-matter jurisdiction by the provisions of the NATO-SOFA of June 19, 1951, to which the Federal Republic of Germany acceded by a Supplementary Agreement of August 3, 1959, effective July 1, 1963. Those treaty arrangements, the government contends, create a comprehensive and exclusive scheme of adjudication and settlement of claims within their purview. The argument appears to be clearly correct. The motion for summary judgment is correct.

The NATO Status of Forces Agreement provides the avenue for claims resulting from death or personal injury, for which a NATO armed force is responsible. An in-depth discussion of NATO-SOFA is included in Burdick



H. Britten's International Law for Seagoing Officers.<sup>72</sup> Outside of NATO, other agreements exist by which intergovernmental-maritime claims are waived - between the United States and Canada, Great Britain, Japan, and Korea.<sup>73</sup> In other countries, if, as a result of a maritime claim, "an attempt was made to arrest a naval vessel in a foreign country, the Department of State, at the instance of the Department of Justice, would be requested to file a suggestion of Government interest, and to obtain release of the naval vessel. . . . A nation's public war vessels are not subject to the jurisdictional process in any other nation."<sup>74</sup>

#### SALVAGE

One bright sunny day as Calamity was proceeding independently to a port in Great Britain, a notice was received to be alert for a derelict that had been permanently abandoned by its master and crew. The vessel was on fire but still afloat in the general area. As luck would have it, Calamity discovered the burning hulk of a small coastal steamer. With great care Calamity maneuvered close to the vessel and dispatched fire crews onboard. After thirty minutes, the crews from Calamity had extinguished the fire. Calamity towed the vessel to their next port with little difficulty. What salvage award would the captain and crew of the Calamity be awarded?

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<sup>72</sup>Burdick H. Britten, International Law for Seagoing Officers (Annapolis, Maryland: Naval Institute Press, 1981), pp. 192-200.

<sup>73</sup>Manual for the Judge Advocate General, Chapter XII (Washington, D.C., Department of the Navy, 1978), p. 17,

<sup>74</sup>*Ibid.*, p. 16.

As discussed earlier in Chapter I, many factors are used to determine salvage awards; first and foremost; the success of the salvage effort; secondly, property in peril; and lastly voluntary service. In this case, all of these factors would be viewed in the affirmative, so all that remains is the amount of award based on the Six Elements of The Blackwall.<sup>75</sup>

But are naval personnel entitled to salvage?

The rule which makes Coast Guard vessels and personnel ineligible to receive a salvage award does not apply to the ships and personnel of the U.S. Navy. The officers and crew of naval vessels are entitled to a salvage reward when they perform services of a nature exceeding the duty imposed upon them. Aiding or saving distressed property or life at sea is not within the scope of the usual or expected duty of U.S. Navy personnel and for performing those functions they may be entitled to a salvage award.<sup>76</sup>

As far as the award for recovering a derelict, there are other relevant circumstances in addition to those stated in The Blackwall:

Other considerations alluded to in American decisions are: the presence of a derelict vessel as an obstruction to navigation and a danger to commerce; that there is a hazard to the salving vessel in towing an unmanned or inadequately manned derelict or wreck; and that the owner's chance of recovering derelict property is generally very slight.<sup>77</sup>

By salving the derelict, it appears that the captain and crew of Calamity became entitled to a salvage award. Some crew members thought the coastal steamer was theirs; that, however, was a common misconception.

. . . one who voluntarily and successfully saves imperiled property on navigable waters - be it damaged, derelict or wrecked - does not become the title holder of the property but saves the property for the benefit of the owner with the expectation of receiving an appropriate salvage award.<sup>78</sup>

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<sup>75</sup> Nicholas J. Healy and David J. Sharpe, Cases and Materials on Admiralty, American Casebook Series (St. Paul, Minn. & West Publishing Co., 1974), p. 576.

<sup>76</sup> M.J. Norris, Benedict on Admiralty (N.Y., N.Y.: Matthew Bender, 1980), section 79.

<sup>77</sup> Ibid., section 150

<sup>78</sup> Ibid., section 150



BASIC BOATS INC., v. UNITED STATES  
352 F. Supp 44 (D.C. R.I. 1972)

The Conjur Man, a 34 foot steel-hulled ketch, lost its mainmast and mizzenmast, and the gasoline auxiliary engine was also inoperable. Contact was made with a Navy helicopter which notified a convoy which dispatched the destroyer Wallace L. Lind. As Lind arrived at the ship, she stopped 500 yards upwind and drifted down onto the yacht; fenders were rigged. The exact nature of the assistance required was not known. As a one-inch nylon line was passed up from the yacht, a large ground swell swept down the side of the Lind, causing the Conjur Man to rise fairly high and then drop suddenly; the line parted and the Conjur Man began to move aft. A boat hook was passed to the yacht with which to fend off, but the two crew members on the Conjur Man decided to abandon ship. The Conjur Man struck the screw guard, damaging the cabin structure. The yacht floated off; eventually, by means of a lyle gun and a heaving line, a towing line was secured to Conjur Man. The skipper of the yacht disembarked the yacht and a crew from the destroyer went aboard for the night. The next day the yacht was turned over to a Coast Guard cutter which completed the tow to Norfolk.

Although the only assistance requested was a tow to Norfolk, the totality of the circumstances compels a finding of an operation in the nature of salvage. Towage is undertaken for the sole purpose of expediting the voyage. Salvage is a service rendered to a vessel which moves it from some distress. Without mainmast, mizzenmast, or auxiliary motor, the Conjur Man was in a position of anticipating some danger.

The actions of Lind were in the nature of a salvage operation as immediacy of harm is not essential to salvage.

As regards the standard of care with respect to a Navy ship acting as a salvor, the rule generally seems to be that a salvor must act in good faith, and exercise reasonable skill and prudent seamanship. The Conjur Man suffered a distinguishable injury, since a crushed cabin was not a peril it faced absent a salvage attempt. Under the circumstances the actions of the Wallace L. Lind did not fall below the standard of ordinary care.

NOLAN v. A.H. BASSE REDERI AKTIESELSKAB  
164 F. Supp 774 (D.C. Penna. 1958)

August 18-19, 1953, the Danish steamship Else Basse caught fire and was abandoned by her master and crew at a point in the Gulf of St. Lawrence. The Navy LST-287, on its way from Labrador to New York, came upon the burning ship at 2:40 A.M. An Army tug, LT-1953, stationed at Harmon Air Force Base Harbor, 50 miles away, arrived at 5:30 A.M. Both vessels, not knowing the cargo stood off at a distance and streamed water onto the burning ship. By 7:00 o'clock the fire was under control and was thought to be extinguished. The ships had learned from the Cornerbrook (the vessel that had picked up the master and crew) that the cargo of Else Basse was merely ore. The two vessels towed the ship, with fire crews onboard to extinguish the blaze, to St. George's Bay.

Courts have held that public officers who render salvage duties may not be awarded salvage. Both vessels in this case, however, acted above and beyond those duties which they were expected to perform as a result of their public employment. There was no legal obligation upon the Naval



vessel to go out of her course or to incur any risk in bringing an abandoned and burning derelict into port.

What if it had been Calamity in need of salvage services? What would have been the responsibilities of the captain of Calamity? One very prominent case involved the grounding of the USS Julius A. Furer in 1974.

B.V. BUREAU WIJSMULLER  
v.  
UNITED STATES OF AMERICA AS OWNER OF THE WARSHIP  
JULIUS A. FURER  
1976 A.M.C. (D.C. N.Y. 1976)

The Julius A. Furer is a warship of the United States Navy. On June 30, 1974 the vessel stranded off the coast of The Netherlands.

. . . Plaintiff Wijsmuller, one of the leading maritime salvage companies in the world, directed four salvage tugs to the assistance of the Furer. Before commencing assistance to the warship, Wijsmuller's representative on the scene obtained the signature of the Captain of the Furer, Commander S.H. Edwards, to the Lloyd's Open Form (LOF), also known as the Lloyd's "no cure - no pay" salvage agreement, or the Lloyd's Standard Form of Salvage Agreement.

The LOF, known throughout the maritime industry and in use by salvors for many years, provides for submission of the salvor's claim for salvage compensation to binding arbitration in London, before an arbitrator appointed by the Committee of Lloyd's.

. . . The Furer was freed from the strand on July 1, 1974. Wijsmuller filed its complaint in this court, pursuant to the Public Vessels Act, 46 U.S. Code, sec. 781.

Wijsmuller seeks an order directing the United States to proceed to arbitration before the arbitrator appointed by Lloyd's.

. . . The Government . . . has consistantly taken the position that it is not bound by the terms of the LOF, and is not required to submit to arbitration before Mr. Darling or anyone else in London. The Government contends that Wijsmuller's salvage compensation must be fixed by this court in accordance with principles of maritime law declared by the federal courts sitting in admiralty.

The initial question, therefore, is whether or not, by enacting the Public Vessels Act, Congress intended to waive sovereign immunity of the United States in such a manner as to require the Government to submit to arbitration in London, in accordance with contractual terms such as those in the LOF. That question must be clearly answered in the negative. While the Public Vessels Act permits suits against the United States for salvage services rendered to one of its public vessels, the venue of such a suit is the United States District Court. Equally inconsistent are the LOF's provisions for giving of security, the salvor's lien upon the salved vessel, and his right to detain her. The Public Vessels Act specifically provides that no lien arises against any public vessel of the United States.

The fact that Commander Edwards, the commanding officer of Furer, signed the LOF is of no legal consequence, because only the Congress can remove or tailor the armor of the sovereign's immunity from suit; no officer or representative, regardless of rank, good intentions, or innocent misapprehension of his powers, has the requisite authority.

Wijsmuller, however, contends that all the foregoing principles and



and lines of authority are changed by the adherence of the United States, in 1970, to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, as implemented by the Act of July 31, 1970. The Supreme Court, has had occasion to observe that . . . it does not follow that, by adhering to the Convention, the United States agreed to do away with limitations upon the waiver of sovereign immunity contained in other statutes.

The Court has no hesitation in holding that the present arbitration agreement, contained in the LOF contract, is "null and void" in respect of the United States because of the sovereign immunity principles discussed previously.

The case will go forward in this court, in accordance with applicable maritime law as declared by the federal courts sitting in admiralty.

B.V. BUREAU WIJSMULLER

v.

UNITED STATES OF AMERICA AS OWNER OF  
THE WARSHIP JULIUS A. FURER  
487 F. Supp 156 (D.C. N.Y. 1979)

The Furer was a United States Navy guided missile armed, anti-submarine warfare escort ship. The Furer had a bulbous bow consisting of a sonar dome, which is ordinarily kept filled with 94 tons of water. At 1355 hours on June 29, 1974, the Furer sailed from the Dutch port of Den Helder. At about 2100 hours on June 29, the Furer's medical staff diagnosed a sick crewman's condition as appendicitis. The Furer reversed her course and increased speed to 20 knots. While proceeding at about 20 knots on a heading of 125 degrees true, the Furer ran aground at about 0123 hours on June 30. The Furer grounded on the Haaksgrunden Bank sandbar, to the west of Den Helder.

To the extent that a precise finding is necessary, I find that the salved value of the Furer was \$23,400,000.

The Wijsmuller company was formed in 1911, and has been engaged in the business of oceangoing towage, salvage, and other maritime activities since then. In 1974 Wijsmuller maintained some of its oceangoing tugs on "salvage station". Captain Nan G. Halfweeg, who in 1974 directed Wijsmuller's salvage department, estimated that in that year 50 percent of the company's operations related to salvage. Before the Furer was refloated in the early morning hours of July 1, a number of unsuccessful efforts were made. The Furer's captain requested assistance from Royal Dutch Navy authorities. At about 0254 hours a Dutch naval tug ordered to meet the Furer for the medical evacuation made up on the Furer's starboard side and tried to tow her off the strand. At about 0517 a second Dutch naval tug arrived. Both tugs tried to free the Furer without success. The Furer's commanding officer, Cdr. Stephen Edwards, decided not to make further use of his vessel's engines, to avoid the possibility of damaging them. He also decided not to pump the sonar dome. Den Helder port authorities had advised Cdr. Edwards that if he was not willing to use the Furer's engines, the available navy tugs lacked sufficient power to free the vessel. Under the circumstances, they recommended that Edwards engage civilian tugs.

Wijsmuller maintains a radio room in its offices at IJmuiden, and continuously monitors all emergency and shipping frequencies. The radio officer on duty received the request to assist the Furer. Pursuant to standing orders, the radio officer directed two Wijsmuller tugs,



the Cycloop and Titan, stationed at the company's berth at Ijmuiden, to proceed to the Furer. Both tugs arrived at the Furer at about 0700. Halfweeg examined the weather forecasts which indicated a depression developing in the North Atlantic. He telephoned the weather bureau, which responded with a prediction that within about 24 hours, the weather, then favorable, would deteriorate with northwesterly winds of force 6 to 8 on the Beaufort scale.

No salvage work was performed until Cdr. Edwards signed the Lloyd's Open Form of salvage agreement.

Halfweeg, at the Wijsmuller offices, learned during the early morning of June 30 of the Furer's sonar dome. He concluded that the vessel was imprisoned by the dome having grounded in the sand. Halfweeg decided to send increased towing power to assist the warship and dispatched the Barendsz and Utrecht.

It is evident from the record that the four tugs employed in the salvage service had a total value, at the time of rendition of the services, of several million dollars.

The initial, unsuccessful efforts of Wijsmuller's tugs to refloat the Furer are for the most part covered by the Statement of Agreed Facts.

At 1120 hours the Cycloop began scouring sand; at 1200 the Titan began towing and sheering. They could not free the Furer. Captain Handgraaf, who had boarded the Furer from the Cycloop, hoped to free the Furer during that high tide. At 1635 the bitt on the Furer to which the Barendsz's towing wire was connected began bending, at 1713 the bitt began tearing out of the Furer's deck.

It was at about this time, however, that Handgraaf and Cdr. Edwards

decided to stop the attempt to free the Furer until shortly before the next high tide.

Following the unsuccessful effort to refloat during the afternoon of June 30, Cdr. Edwards, in consultation with his officers, decided to pump out the sonar dome. Wijsmuller's salvage master, Captain Handgraaf, on board the Cycloop, was advised of Edwards' intention, and agreed to it. The effect of pumping out the dome's 94 tons of water, which requires several hours, is to raise the dome about 18 inches, lower the Furer's propeller about 7 inches, and raise the vessel as a whole a little over 3 inches.

The salvors contemplated initiating a concerted effort at refloating the Furer somewhat in advance of high tide, they were partially overtaken by events. At some time during the 0000 to 0400 watch, and before the Wijsmuller tugs had begun trying to pull the Furer off the strand, the Furer was observed to be moving at the bow. Executive Officer Burns, who remained on the bridge after Edwards retired, thought he noticed "a slight up and down movement of the bow"; the time was "very, very close to about 1:30." Burns went forward to the bow, where he was joined by Boatswain's Mate Robert Garcia, who had been stationed on the fantail and got a feeling "like the ship came alive again"; it also appeared to him that the Barendsz and Utrecht, anchored astern of the Furer, were closer. At the Furer's bow, Burns and Garcia took lead line readings. Burns testified that when he was taking soundings on the Furer's starboard bow, a Wijsmuller tug was positioned alongside the warship's starboard side scouring sand. The tug on the Furer's starboard side was the Titan; her log recites that



she moored alongside the Furer and started scouring sand at 0130.

Burns felt "a definite up and down movement at the bow," further testified that he saw the two tugs "that had been astern of us anchored, were now coming forward" so that they were "almost off our bow itself," and concluded that "we were free at that time." Burns awakened Edwards with a report that the Furer had refloated.

The Furer's deck log notes that at 0157; "taking tension on forward tug line." The "forward tug" is not identified - which, as her log indicates, was attempting at 0200 "to pull the Furer afloat." In any event, it is clear that a forward, freeing force was being generated by both these tugs.

The Government contends that "the Furer floated free in a time period of approximately 0120 at 0130 hours on July 1"; that only after she floated free were the Cycloop and Titan "reactivated, moored on opposite sides and utilized to further push the Furer astern to its ultimate anchorage area". In short, says the Government: "At the time of the freeing of the Furer there were no affirmative activities underway on the part of the four tugs." The Court finds that the Furer had not "floated free" of the strand as early as 0120 or 0130. The phrase connotes a state of total liberation from earlier confinement, so that the vessel may again maneuver freely. The Furer did not recapture that state of grace until after 0200 on July 1. All the logs and contemporaneous reports attest to that fact. The Court accepts that the Furer's personnel observed a motion in the bow at about 0130; those on board the Dutch tugs observed the same phenomenon. That motion resulted from the lightening effect of pumping out the sonar dome. The dome had been

buried in the sand at least to a depth of five feet. The fact of the matter is that pumping out the Furer's sonar dome was simply insufficient to refloat the vessel at the time in question. The Furer floated free, shortly after 0210 on July 1, as the result of several factors: prior scouring of sand by the Wijsmuller tugs; a possible weakening of the sand "nest" imprisoning the dome by the prior, unsuccessful salvage efforts; pulling by the Barendsz when the motions of the Furer were observed; the forward thrust of the Cycloop and the Titan, moored to the port and starboard sides of the Furer, respectively; and the increased floatation realized by the pumping of the sonar dome. The Dutch Navy divers reported that there was no evidence of underwater damage to the Furer, except that the ends of two of the propeller blades had been slightly damaged. The Furer got underway for Denmark at 0757. The Court accepts the testimony of the Government's expert witness John O'Brien, employed by the Naval Ship's Engineer Center, that in her position "aground somewhere by the bow," and in the conditions of current and seas prevailing at the time, the Furer was in no particular physical danger from the time of grounding to refloating.

The question is whether Wijsmuller's efforts preserved the Furer from risk of further expense or damage. The Court found that there was an appreciable danger to the Furer broaching, if Wijsmuller had not assisted in freeing her. Had the Furer broached, the worsening weather would have placed her in a position of considerably greater peril.

On the issue of the contribution of others to the overall salvage effort, it is well recognized in American law that where a number of groups combine their efforts to save property, the court must determine the value of each individual contribution to the overall effort.



The final pertinent factor is Wijsmuller's status as a professional salvor. Wijsmuller devoted a substantial measure of its resources to salvage, including keeping salvage tugs on station. In the Court's judgment, a company is entitled to the special consideration afforded a professional salvor if, on an ongoing basis, a substantial measure of its resources is devoted to salvage services and readiness; and that, in consequence, the company incurs during periods of inactivity, the idle expense which is the rationale for the special consideration. Wijsmuller qualifies under those criteria.

Considering all these factors, applying the criteria of The Blackwall as best the Court can, and finally arriving at what one hopes will be regarded at least by some as "an intelligent guess," the Court concludes that a salvage award of \$175,000 is reasonable in respect of the salvage services rendered by Wijsmuller to the Furer on June 30 and July 1, 1974.

This case again illustrates the complexity of admiralty matters and the importance of acting in strict compliance with the procedures provided in the Manual of the Judge Advocate General and other Navy instructions. This case should also demonstrate the need for prompt correct action and the need for a practical understanding of admiralty before the incident occurs.

Calamity returned to Charleston without further incident. Her captain and officers were more knowledgeable in admiralty matters than before but were never directly involved in the proceedings (with the possible exception of reporting the incident and conducting an onboard survey). Most claims are settled out of court with damages up to one million dollars being paid by the Secretary of the Navy.

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